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## **ENVIRONMENTAL PROTECTION**

### **ENVIRONMENTAL REGULATION AND LAND USE MANAGEMENT**

#### **DIVISION OF WATER QUALITY AND DIVISION OF WATERSHED**

##### **MANAGEMENT**

##### **Sewage Infrastructure Improvement Act Grants**

##### **Proposed Readoption with Amendments: N.J.A.C. 7:22A**

##### **Proposed Repeal: N.J.A.C. 7:22A-7**

Authorized by: Bradley M. Campbell, Commissioner  
Department of Environmental Protection

Authority: N.J.S.A. 58:25-23 et seq., 40:55D-93 et  
seq., 58:10A-1 et seq., 58:11A-1 et seq.,  
and 13:1D-1 et seq., P.L. 1989, c.181 and  
P.L. 1990, c.28.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement

DEP Docket Number:

Proposal Number: \_\_\_\_-04\_\_\_\_/\_\_\_\_

A **public hearing** concerning this proposal will be held on Tuesday, January 11, 2005,  
from 1:30 P.M. until close of comments:

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New Jersey Department of Environmental Protection

Public Hearing Room, 1<sup>st</sup> floor

401 East State Street

Trenton, NJ 08625

Submit written comments by February 4, 2005 to:

Alice A. Previte, Esq.

Attention: DEP Docket Number \_\_\_\_\_

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

PO Box 402

Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The agency proposal follows:

### **Summary**

Pursuant to the requirements of Executive Order No. 66(1978), N.J.A.C. 7:22A is set to expire on November 3, 2004. The rules implement the Sewage Infrastructure Improvement Act (the Act) N.J.S.A. 58:25-23.1 et seq., and establish the procedures by which the Department provides grant funds for various stormwater management and combined sewer overflow abatement planning and design activities. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated with exception of N.J.A.C. 7:22A-7. Accordingly, as explained below, the Department is proposing to readopt N.J.A.C. 7:22A with amendments to reflect changes in stormwater monitoring requirements consistent with 1995 amendments to the Act. The Department is proposing to repeal N.J.A.C. 7:22A-7.

The Act has two main components: (1) to map and investigate stormwater sewer systems in Atlantic, Cape May, Monmouth and Ocean counties, and (2) to address

discharges from combined sanitary and storm sewer systems throughout the State. The Act states that these sources of pollution contribute greatly to the biological and chemical degradation of coastal and surface waters of the State. Nonpoint sources of pollution create public health dangers and mandate beach and shellfish bed closings by contributing high levels of bacteria to surface waters through storm sewer systems. Overflows of raw sewage from combined sewer overflows are a major source of water pollution. Pursuant to the Act, all municipalities with storm sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties (referred to as “affected municipalities”) are to adopt a final map of their sanitary and stormwater sewer systems. The Act also created planning and design grant programs to assist governmental units with their combined sewer overflow or interconnection/cross-connection abatement needs.

In 1995, the Act was amended. The requirement that municipalities conduct quarterly monitoring of the water quality at the outfall lines for any stormwater sewers discharging into salt waters was replaced with a requirement for monitoring priority outfall lines two times a year, and all others annually. (See N.J.S.A. 58:25-26(a).) The amendments require the Department to define, by regulation, priority outfall lines at N.J.S.A. 58:25-26(c). In addition, the amendments clarified some of the requirements for municipalities to report monitoring results to the Department.

The Department took a phased approach to the implementation of mapping and investigative requirements of the Act and the rules. Phase I was designed to give municipalities a better understanding of their storm sewer system including locating all storm sewer outfalls and stormwater management basins. Grants totaling just over one million dollars were allocated to this phase. This phase was completed in September of 1992.

Phase II of the implementation strategy required the mapping of the storm sewer and sanitary sewer systems, the investigation of dry weather flows where they existed and the elimination of interconnections between the storm and sanitary sewer systems identified as a result of this investigation. In addition, municipalities were required to initiate a sampling program at all outfalls identified in Phase I. The Department issued over six million dollars in grants to 94 coastal municipalities for the implementation of Phase II. Some of these grants have yet to be closed out.

During Phase III of the implementation plan, municipalities will use the information collected during Phase II to develop a nonpoint pollution control plan and stormwater management plan to address the quality of stormwater being discharged to salt water. This work is now required of municipalities on a Statewide basis pursuant to municipal permits for separate stormwater systems under the New Jersey Pollutant Discharge Elimination System (NJPDES) rules (N.J.A.C. 7:14A) adopted effective on February 2, 2004 (see 36 N.J.R. 813(a)).

With the exception of the Interconnection/Cross-Connection Abatement grant aspects administered under N.J.A.C. 7:22A-7, numerous grants have been awarded pursuant to the Act and these rules, and work is underway for many project sponsors. Therefore, readoption of these rules is necessary for the on-going administration of these grants until the work can be completed and final payments can be made.

The following is a summary of the rules proposed for readoption and the proposed amendments.

#### Subchapter 1 General Provisions

N.J.A.C. 7:22A-1 identifies the scope and purpose of the rules and includes definitions that are applicable to the entire chapter. Several sections in this subchapter describe the remedies available to the Department in instances where a grantee has not complied with the provisions of the rules, such as withholding of funds, stop-work orders and termination or rescission of grants. Other sections within this subchapter identify requirements for the Department's access to facilities and records pertaining to projects, and the procedures to be followed to request administrative hearings.

The Department is proposing to amend N.J.A.C. 7:22A-1.4 (Definitions) by adding a definition of "priority outfall." As proposed, "priority outfall" means those stormwater outfalls discharging to salt waters listed as impaired on the 2004 New Jersey Department of Environmental Protection Integrated Water Quality Monitoring and Assessment Report, sublists 3, 4 and 5, as revised and amended in accordance with

section 305(b) of the Federal Water Pollution Control Act. Waters prone to nonpoint source pollution impacts are designated as “impaired” in the Department’s Integrated Water Quality Monitoring and Assessment Report and the Department has determined that it is appropriate to focus monitoring efforts in these areas.

#### Subchapter 2 Grant Agreement Procedures and Requirements

N.J.A.C. 7:22A-2 includes provisions regarding the processing of grant agreements and modifications to grant agreements, and identifies conditions that are applicable to all grant awards made under this chapter. The Department is proposing to readopt subchapter 2 without change.

#### Subchapter 3 Preliminary Mapping and Inventory

N.J.A.C. 7:22A-3 provides a mechanism to award funds to affected municipalities to inventory their sanitary/stormwater systems and identify stormwater outfalls. The subchapter includes sections regarding eligibility, application procedures, reporting and inventory requirements and allowable project costs for preliminary mapping activities. Also included are sections that describe the Department’s evaluation of grant applications and the approval or disapproval of applications. The Department is proposing to readopt subchapter 3 without change.

#### Subchapter 4 Final Mapping and Monitoring Requirements

N.J.A.C. 7:22A-4 includes sections that identify uniform standards for the preparation of final maps, investigative priority listing, and monitoring requirements to identify interconnections and/or cross-connections. Also included are sections dealing with application procedures, application evaluation, the approval or disapproval of grant applications, and allowable costs.

In accordance with the Act, a final map is required to locate all sanitary and stormwater sewer lines within the geographic boundaries of an affected municipality. The final map must also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department. The rules provide a mechanism to award funds to affected municipalities to prepare detailed maps of their sanitary/stormwater systems and identify interconnections and/or cross-connections. In addition, the affected municipalities are required to monitor the water quality at the outfall locations for any stormwater sewer systems that discharge to salt waters.

In order to bring these rules into conformity with the 1995 amendments to the Act, the Department is proposing to amend N.J.A.C. 7:22A-4.8(a) by requiring affected municipalities to sample priority stormwater outfall lines twice per year and all others once per year. Consistent with this amendment, the Department is proposing to amend N.J.A.C. 7:22A-4.2(f) and (g), 4.6(d)1, 4.8(a) through (g), and 4.15(a) to substitute the new term, “periodic monitoring” for “quarterly monitoring.” The Department is also proposing to delete from N.J.A.C. 7:22A-4.2(f) the March 18, 1995, compliance date,



inasmuch as that date has passed. In addition the Department is proposing to amend N.J.A.C. 7:22A-4.8(c) to allow investigative monitoring performed in accordance with N.J.A.C. 7:22A-4.5(c)1 or (d) to fulfill the monitoring requirements as established in N.J.A.C. 7:22A-4.8(a).

Subchapter N.J.A.C. 7:22A-5 is reserved.

#### Subchapter 6 Combined Sewer Overflow Account Procedures and Requirements

N.J.A.C. 7:22A-6 includes provisions regarding planning and/or design grant awards for combined sewer overflow abatement projects. The subchapter also includes sections that address the prioritization of projects, application procedures, allowable project costs, disbursements, force account work and project initiation.

The Act requires all public entities that own or operate a combined sanitary and stormwater sewer system to provide appropriate abatement measures, approved by the Department, at any combined sewer overflow point where a New Jersey Pollution Discharge Elimination System (NJPDES) permit pursuant to N.J.S.A. 58:10A-1 et seq. is required. Combined sanitary and stormwater sewer systems, by definition, discharge untreated sewage during significant rain events. These discharges are a suspected source of solid/floatable debris in the State's coastal waters. As an initial step to meet the goals of the Act, all combined sewer overflow systems were required to eliminate all dry weather discharges and reduce solids/floatingables in the discharges.

In accordance with N.J.A.C. 7:22A-6, the Department has awarded many planning and design grants to address discharges from combined sewer overflow facilities and is processing the final grants under the combined sewer overflow aspects of the program. The Department is proposing to readopt subchapter 6 without amendment, in order to facilitate the on-going administration of the grants that have been made so that work can be completed.

Significant progress has been made toward the elimination of dry weather overflows and control of discharge of solids and floatables into surface water bodies, for which planning and design has been done, in large part, through the grants available pursuant to this subchapter. The Department will continue to advance environmental protection efforts as owners and operators of combined sanitary and stormwater systems develop Long-Term Control Plans as required by their NJPDES permits. In addition, low-cost funding is available through the Environmental Infrastructure Financing Program for the construction of necessary infrastructure.

#### Subchapter 7 Interconnection/Cross-Connection Abatement Account Procedures and Requirements

The Department is proposing to repeal N.J.A.C. 7:22A-7, which sets forth the procedures and requirements for the application and award of planning or design grants from the Interconnection/Cross-Connection Abatement Account (a component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement

Assistance Fund). There has been no State money available to provide grants for this activity. Accordingly, the Department has awarded no grants to any eligible municipality. Nor is there State money anticipated to be made available to provide future grants for this activity.

### **Social Impact**

The rules proposed for readoption with amendments will have a beneficial social impact. The sanitary/stormwater mapping requirements and combined sewer overflow planning activities will continue to provide the municipalities and local government units a technical database with which to subsequently implement pollution abatement measures within their boundaries. The grants available to local government units under these rules will also continue to benefit the citizens of New Jersey, as well as the seasonal visitors to the State through improvements to the health, safety, aesthetic value and recreational attributes of the surface, including coastal, waters of the State.

The proposed repeal of N.J.A.C. 7:22A-7 will not have a social impact because the Department has not awarded any grants under the subchapter and funds have not been made available to fund such grants in the future.

### **Economic Impact**

The rules proposed for readoption with amendments, which set forth the requirements for municipalities and local government units to receive grants for certain pollution control measures, will enable those municipalities and local government units to complete on-going planning, design and monitoring ultimately needed to improve their stormwater sewer systems or combined sewer systems. Grants were awarded to cover up to 90 percent of the planning or design costs related to these pollution control activities. The grant recipients were responsible for at least 10 percent of the project costs. The moneys initially allocated for the mapping and monitoring requirements of the Act were not sufficient to fully cover the costs associated with that work. However, these moneys, available either through the Act or the 1989 combined sewer overflow bond fund, provide a positive economic incentive to continue activities that aid in the process of upgrading estuarine and coastal water quality. Real estate and tourism income will both continue to benefit by the positive recreational and aesthetic conditions created by clean surface water and coastal environment.

The proposed amendments at N.J.A.C. 7:22A-4.8 will result in a reduction in frequency of stormwater outfall monitoring requirements, thereby reducing the annual monitoring costs of the affected municipalities. This will allow the affected municipalities to focus stormwater sampling efforts and stormwater and sanitary infrastructure investigations on areas deemed a priority (listed as impaired) by the Department's Integrated Water Quality Monitoring and Assessment Report in accordance with section 305(b) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.).

The proposed repeal of N.J.A.C. 7:22A-7 will not have an economic impact, inasmuch as the Department has not awarded any grants under the subchapter and funds have not been made available to fund such grants in the future.

### **Environmental Impact**

The rules proposed for readoption with amendments will have a positive environmental impact by continuing requirements related to coastal mapping/monitoring as well as maintaining the availability of funding to provide the affected municipalities and local units with money to complete on-going planning and design activities needed for the remediation of stormwater and combined sewer system pollution sources. Untreated sewage and nonpoint source pollution are discharged from these systems during and after storm events causing elevated levels of bacteria, nutrients, toxics, oil and grease, and other pollutants to enter the surface waters of the State. Controlling these pollution sources by eliminating point and nonpoint sources of pollution will result in water quality improvements. The improvement in water quality will benefit the environment through improvements in the health and preservation of the aquatic ecosystem. This will preserve the natural value of the State's water resources and, in particular, the coastal resources such as shellfish, finfish and other aquatic life.

The proposed amendments at N.J.A.C. 7:22A-4.8 will have a positive effect on coastal water quality by allowing the affected municipalities to focus stormwater

sampling efforts and stormwater and sanitary infrastructure investigations on areas listed as impaired by the Department's Integrated Water Quality Monitoring and Assessment Report per section 305(b) of the Federal Water Pollution Control Act, rather than expending available funds on quarterly monitoring of all stormwater outfalls.

The proposed repeal of N.J.A.C. 7:22A-7 will not have an impact on the environment, inasmuch as the Department has not awarded any grant under the subchapter and funds have not been made available to fund such grants.

### **Federal Standards Statement**

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt or amend state regulations that exceed any Federal Standard or requirement to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:22A is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, Federal standard or Federal requirement. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

### **Jobs Impact**

The proposed readoption with amendments of the Sewage Infrastructure

Improvement Act Grants rules is not expected to generate new jobs or cause the loss of existing jobs. The rules proposed for readoption will allow the continued availability of grant funds to the municipalities, through the Sewage Infrastructure Improvement Act, for such activities as pollution control and abatement measures (including design, planning and implementation), mapping and monitoring. The jobs currently generated by the need for services to conduct these activities will, therefore, continue uninterrupted.

Additionally, the improved water quality resulting from the elimination of point and nonpoint sources will contribute to the preservation of the States water resources. Therefore, the jobs associated with the State's water resources, which include, but are not limited to, fishing (both commercial and recreational), tourist activities and real estate, will continue to benefit, either directly or indirectly, from a cleaner environment.

The proposed repeal of N.J.A.C. 7:22A-7 will not have an impact on job creation or loss, inasmuch as the Department has not awarded any grant under the subchapter and funds have not been made available to fund such grants.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments are not expected to affect the agriculture industry, because the rules apply only to municipalities and local government units, and owners and operators of combined sewer systems. The Department is not aware of any agricultural entity to which the rules, as proposed for readoption, would apply. The proposed repeal of N.J.A.C. 7:22A-7 will not have an impact on the agricultural industry as this subchapter only pertained to municipalities and local government units.

### **Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the rules proposed for readoption with amendments will not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules establish mapping/monitoring requirements for affected municipalities and set forth procedures by which the Department may provide funds for required activities and for improvements to combined sewer systems.

### **Smart Growth Impact**

Executive Order No. 4(2002) requires State agencies that adopt, amend, or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and



implementation of the State Development and Redevelopment Plan (State Plan). The rules proposed for readoption with amendments and the rule proposed to be repealed do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to guiding principles in the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Since the rules proposed for readoption will help protect water quality, the proposed rules support the conservation and environmental protection goals and policies underlying the State Plan.

**Full text** of the proposed readoption and repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:22A.

**Full text** of the proposed amendments follows (additions indicated in boldface thus deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 7:22A-1.4 Definitions

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

...

**“Priority outfall” means any stormwater outfall discharging to salt waters listed as impaired on the 2004 New Jersey Department of Environmental Protection Integrated Water Quality Monitoring and Assessment Report, sublists three, four, and five, as revised and amended in accordance with section 305(b) of the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.).**

## SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

### 7:22A-4.2 Reporting requirements

(a) – (e) (No change.)

(f) All affected municipalities shall submit a priority list for [quarterly] **periodic** monitoring in accordance with N.J.A.C. 7:22A-4.8(b) to the Department with the final map[ or by March 18, 1995, whichever is later].

(g) All affected municipalities shall submit a copy of the [quarterly] **periodic** monitoring data collected in accordance with N.J.A.C. 7:22A-4.8 to the Department within 20 working days from the date that the municipality receives the data from the laboratory.

In no case shall this time period exceed 40 working days from the date of collection of the sample. The submission shall note where sample analysis indicates that there are excessive levels of bacteria, as specified in N.J.A.C. 7:22A-4.7.

(h)-(i) (No change.)

#### 7:22A-4.6 Sampling and testing requirements

(a)-(c) (No change.)

(d) All affected municipalities shall perform sampling or testing in accordance with N.J.A.C. 7:22A-4.5 and 4.8 as follows:

1. When performing sampling in accordance with N.J.A.C. 7:22A-4.5(c)1 or [quarterly] **periodic** sampling in accordance with N.J.A.C. 7:22A-4.8, a grab sample shall be sampled for the presence of the following bacterial indicators:

i.-iii. (No change.)

2.-3. (No change.)

(e)-(f) (No change.)

#### 7:22A-4.8 Periodic monitoring

(a) All affected municipalities shall initiate the [quarterly] **periodic** monitoring of their stormwater outfall lines in the first month following the approval of the final map.

The affected municipality shall[, on a quarterly basis,] take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with [N.J.A.C. 7:22A-4.6\(d\)1](#). **The sampling frequency for the periodic monitoring is as follows:**

- 1. For priority outfalls, sampling shall be conducted twice each year;**
- 2. For those outfalls other than those priority outfalls, sampling shall be conducted once each year.**

(b) All affected municipalities shall submit a priority list, for the Department's approval, which identifies the order in which the stormwater sewer systems discharging to salt waters will be monitored on a [quarterly] **periodic** basis. This priority list shall be based on the priorities established in N.J.A.C. 7:22A-4.4.

(c) [Quarterly] **Periodic** monitoring shall be performed in accordance with the sampling procedures outlined in N.J.A.C. 7:22A-4.6. [For those outfalls where monitoring, as required in (a) above, and sampling as required by N.J.A.C. 7:22A-4.5(c)1 or (d)1i, will occur during the same quarter, only one grab sample need be taken.] **Investigative sampling performed in accordance with N.J.A.C. 7:22A-4.5(c)1 or (d)1i can be used to satisfy the periodic monitoring requirements of (a) above.**

(d) [Quarterly] **Periodic** monitoring shall also include monitoring of any dry weather

discharges identified from the stormwater outfalls. Outfalls having dry weather

discharges shall be monitored during both dry and wet weather events.

(e) In the event that there is no sufficient rainfall to produce flow from any given outfall during the scheduled [quarterly] **periodic** monitoring, the affected municipality shall perform the monitoring during the next storm event to produce a sufficient flow as established in [N.J.A.C. 7:22A-4.6\(f\)](#).

(f) The affected municipality shall submit to the Department all [quarterly] **periodic** monitoring data and specify any excessive levels of bacteria, as set forth in 7:22A-4.7, found during [quarterly] **periodic** monitoring as required in N.J.A.C. 7:22A- 4.2(g).

(g)-(h) (No change.)

#### 7:22A-4.15 Allowable costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. The [quarterly] **periodic** monitoring requirements under N.J.A.C. 7:22A-4.8 will not be an allowable cost under the final mapping grant award. Allowable project costs may include:

1. –2. (No change.)

(b) (No change.)

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27(1994), permit the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption and repeal. I hereby authorize this proposal.

Date: \_\_\_\_\_

\_\_\_\_\_  
Bradley M. Campbell, Commissioner  
Department of Environmental Protection